



County of Los Angeles CHIEF ADMINISTRATIVE OFFICE

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April 30, 2003

To: Supervisor Yvonne Braithwaite Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

STATE LEGISLATIVE UPDATE

Pursuit of County Position on Legislation

AB 1151 (Dymally) makes several changes to existing law regarding county and social worker liability, including, but not limited to overturning the decision of *Terrell R. v. County of Los Angeles* (2002). Existing law immunizes counties and their social workers from liability for discretionary placement decisions. In *Terrell R.* the court held that the County and social worker were not civilly liable for injuries occurring to a child while in foster care.

Terrell R. was a personal injury tort action filed by a dependent child against a foster family agency, the foster parents, and the County. The child alleged that he was sexually molested by his foster father. The child's allegation against the County was that a county social worker had placed him with a foster parent who had not been properly certified by the foster family agency. Apparently, the parent had failed to complete the number of study hours required to become a foster parent, although the parent had substantially complied with this requirement. However, the foster family agency had certified this parent and never disclosed to the County that the parent's study hours had not been completed or that the parent's home was anything other than certified.

The County was granted summary judgment, which was affirmed by the Court of Appeal. The Court determined that the foster parent had been certified by the foster family agency, and the social worker's reliance on the foster family agency was sufficient. The social worker's duty had been to place the child with a certified foster home. The foster family agency certified this foster home and advised the social worker that this home had been certified. The social worker was not informed or otherwise aware that the family's certification had been technically incorrect. The trial court and Court of Appeal refused to extend liability to the County for the foster family agency's misfeasance. The California Supreme Court denied review. Therefore, *Terrell R.* upholds current law immunizing counties and their social workers from liability for discretionary placement decisions.

County Counsel indicates that AB 1151 would eliminate county social workers' statutory immunities for discretionary placement and monitoring decisions by changing social worker's discretionary decisions into "mandatory duties" of counties. This would impose a strict liability standard on social workers for virtually every decision they need to make in order to do their jobs. This bill would also cause foster family insurance premiums to increase to meet the higher liability standard, and thereby make it extremely costly for foster families to obtain required liability insurance and discourage social workers from doing their jobs to protect children when every single decision would potentially involve them in a lawsuit.

County Counsel further states that the practical impact of AB 1151 is to erode the discretionary act immunity for day to day decisions made by social workers and will likely increase costs by millions of dollars annually as a result of increased damage awards, settlement agreements, and attorney's fees.

The Department of Children and Family Services (DCFS) indicates that AB 1151 would expose social workers to personal liability and may deter social workers from entering the profession and/or remaining, which would negatively impact foster children.

DCFS and County Counsel recommend that the County oppose AB 1151, and we concur. Opposition to AB 1151 is consistent with the court's ruling in *Terrell R.* and existing policy to limit dependency related liability. **Therefore, our Sacramento advocates will oppose AB 1151.** This measure is co-sponsored by Linda Wallace Pate, attorney at law, and the Children's Advocacy Institute and supported by the Consumer Attorneys of California. Registered opposition includes the County Welfare Directors Association and the Nonprofits Insurance Alliance of California. AB 1151 is set for hearing on April 29, 2003 in the Assembly Human Services Committee.

Status of County-Interest Bills

County-supported AB 28 (Pavley), which would establish the Firefighting Hazardous Materials Response Team Equipment Program to provide funding for the purchase of hazardous materials response apparatus and equipment for State and local agencies, passed the Assembly Environmental Safety and Toxic Materials Committee on April 23, 2003, on a 7 to 0 vote and was sent to the Assembly Appropriations Committee where it awaits a hearing date.

County-supported AB 936 (Reyes), which would amend the State Penal Code to expand the definition of stalking to include "baby stalking", was amended on April 22, 2003, to change the definition of baby stalking to any person who loiters, prowls, or wanders about and refuses to leave, or fails to leave a neonatal unit, maternity ward, or birthing center located in a hospital or clinic when requested to leave by authorized personnel. AB 936 passed the Assembly Public Safety Committee on a vote of 7 to 0 and was referred to the Assembly Appropriations Committee where it awaits a hearing date.

County-supported SB 469 (Scott), which would permit school districts to purchase instructional materials for visual and performing arts, foreign languages and health, if pupils have been provided with the State-required instructional materials, passed the Senate Appropriations Committee on April 28, 2003, and now will be sent to the Senate floor.

We will continue to keep you advised.

DEJ:GK
MAL:JF:JKL:ib

c: Executive Officer, Board of Supervisors
 County Counsel
 Local 660
 All Department Heads
 Legislative Strategist
 Coalition of County Unions
 California Contract Cities Association
 Independent Cities Association
 League of California Cities
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